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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO AVILES,

Defendant and Appellant.

A154090

(Solano County
Super. Ct. No. FCR326099)

Francisco Aviles was convicted by a jury of burglary of a dental office. He contends the evidence was insufficient to support the conviction and the trial court prejudicially abused its discretion when it precluded defense testimony about surveillance cameras in the vicinity of the burglary. Neither contention has merit. We affirm.

BACKGROUND

The dental office manager arrived at work the morning of February 18, 2015, to find a broken window, broken glass and drops of blood on a counter near the window and broken glass on the floor. The office was in disarray with drawers and cabinets open, items scattered on the floor and a number of electronic items, tools and other things missing or out of place. An office safe had been moved from its usual location and left in a hallway. Outside, the handle to a detached storage shed door had been broken off. A pill bottle usually kept on or near a windowsill in the office was on the ground near the shed, along with a piece of broken window frame and other items.

Fingerprints lifted from the pill bottle and a palm print lifted from the frame of the broken window matched Aviles's. DNA from the blood drops on the counter matched Aviles's DNA.

Fairfield Police Officer Steve Trojanowski's interview with Aviles was recorded and played for the jury. Aviles denied any involvement in the burglary. He said he had never been in the dental office, was not familiar with the address, and indicated there was no reason his fingerprints would be inside the office.

Aviles's former girlfriend testified for the defense that she and Aviles were homeless in February 2015. Around that time she and Aviles charged their phones using an exterior electrical outlet in the office complex where the dental office was located.

The jury convicted Aviles of burglarizing the dental office and acquitted him of burglarizing a church a few days earlier. The court found allegations of two prior serious and violent felonies and one prior term in state prison to be true, struck one of the prior offenses, and sentenced Aviles to a five-year prison term. This appeal is timely.

DISCUSSION

I. Substantial Evidence Supports the Burglary Conviction

Penal Code section 459 provides that "[e]very person who enters any house . . . or other building . . . with intent to commit grand or petit larceny or any other felony is guilty of burglary." Aviles contends there was insufficient evidence to prove either entry or intent. He argues he could have left fingerprints on the exterior of the window frame while using the nearby electrical outlet to charge his phone; that the pill bottle with his fingerprint was also found outside of the office; that the forensic expert who identified the prints as his could have been wrong; and that the blood found on the counter and identified as his "could well have been deposited before or after the burglary and not clearly during or as part of the burglary." Even if entry were adequately proven, Aviles maintains, the prosecutor failed to prove he intended to commit theft or another felony when he broke into the office.

The principles governing our review are well settled. "When reviewing the sufficiency of evidence to support a criminal conviction, we ask whether any rational trier

of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] We view the whole record in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence to determine whether the record discloses substantial evidence. [Citations.] ‘Before a judgment of conviction can be set aside for insufficiency of the evidence to support the trier of fact’s verdict, it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support it.’ [Citation.] ” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245.)

“Because intent is rarely susceptible of direct proof, it may be inferred from all the facts and circumstances disclosed by the evidence. [Citations.] Whether the entry was accompanied by the requisite intent is a question of fact for the jury. [Citation.] ‘Where the facts and circumstances of a particular case and the conduct of the defendant reasonably indicate his purpose in entering the premises is to commit larceny or any felony, the conviction may not be disturbed on appeal.’ ” (*People v. Kwok, supra*, 63 Cal.App.4th at p. 1245.)

This is such a case. Someone broke into the dental office during the night and stole electronics and other valuable items. The office window was broken. Broken glass and drops of Aviles’s blood were found on the counter beneath the broken window. Aviles’s palm print was on the window frame and his fingerprint was on a pill bottle taken from the office and found outside the damaged shed after the burglary. Aviles was not a patient at the dental office, told Officer Trojanowski he had never been inside the office, and concurred there was no reason his fingerprints would be there. This was sufficient to prove Aviles entered the office and that he did so with the intent to commit theft. (See *People v. Maury* (2003) 30 Cal.4th 342, 396 [appellate court must accept logical inferences the jury might have drawn from the circumstantial evidence].)

Aviles suggests there were innocent explanations for the evidence—e.g., the fingerprints were not actually his or, if they were, only establish that he was *outside* the office. He also emphasizes what the evidence did *not* show—e.g., his blood or fingerprints on other locations inside the office, when or how his blood and fingerprints

“were deposited” there, stolen items in his possession, or how he carried them away “with no car or other means.” These arguments are unavailing. “ “Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant’s guilt beyond a reasonable doubt.’ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ ” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Such is the case here.

II. The Court Properly Excluded Security Camera Evidence

Aviles contends the court abused its discretion and violated his constitutional right to present a defense when it excluded evidence that buildings near the dental office were equipped with surveillance cameras at the time of the burglary. We disagree.

Background

During the defense case, Aviles moved to introduce photographs from 2015 depicting security cameras at North Bay Healthcare (North Bay), a nearby medical office complex. North Bay security manager Tyler Jobson was to testify that he reviewed the photographs and they depict the security cameras in place in 2015. Aviles also wished to recall Officer Cathy Ramblas to question her about the crime scene investigation, and to use Jobson’s testimony and the photographs to impeach her expected testimony that she ascertained there were no security cameras in place at the time of the burglary. Aviles argued the evidence was relevant to Officer Ramblas’s credibility and the police department’s lack of diligence in the investigation.

The prosecutor argued the evidence was irrelevant to impeach Officer Ramblas because her report said a North Bay employee told her there were no surveillance cameras, not that she had independently verified there were none. The prosecutor also argued the evidence was inadmissible under Evidence Code section 352 because Jobson would not testify as to whether North Bay’s cameras recorded footage of the dental office the night in question, whether he reviewed any such footage, or whether the cameras

were even operational at that time. Further, the evidence was unduly prejudicial because it would invite the jury to speculate about whether there was video footage of the burglary and infer such footage was exculpatory.

The court excluded the proposed evidence under Evidence Code section 352. It explained: “It looks like [Jobson] was interviewed, what, a week ago today. The probative value of his testimony, even for its impeaching value, is speculative. There is a danger, real danger the jury will be misled into thinking that the camera was—had it been seen, it would have provided some potential evidence that might be germane to the case. And it’s more collateral on impeachment than it is direct impeachment, because the defense proposes to recall [Officer] Ramblas and elicit the testimony that it then proposes to impeach. It’s just unacceptable.” The court further observed that any probative value was outweighed by the danger of undue prejudice “in light of the inability to establish what the field of view of that camera was, whether it was actually in working order on that specified date, whether anything was captured. I just think it’s speculative and it’s just of little probative value on the issue of impeaching [Officer] Ramblas.” Further, the evidence risked the jury speculating that exculpatory evidence was lost by Officer Ramblas’s failure to investigate the security cameras, when the evidence did not establish the existence of any exculpatory evidence. Finally, investigating whether the cameras were operational in 2015, whether the North Bay employee lied to Officer Ramblas and whether there was ever surveillance footage available to be collected would be unduly time-consuming so late in the trial.

Analysis

A court has “ ‘broad discretion’ under Evidence Code section 352 ‘to exclude even relevant evidence “if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” ’ ” (*People v. Merriman* (2014) 60 Cal.4th 1, 60.) “An appellate court reviews a court’s rulings regarding relevancy and admissibility under Evidence Code section 352 for abuse of discretion. [Citation.] We will not reverse a court’s ruling on such matters unless it is shown ‘ “the trial court

exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” [Citation.]’ ” (*Id.* at p. 74; see *People v. Vargas* (2001) 91 Cal.App.4th 506, 545, 543 [trial courts “have wide discretion in determining the relevancy of evidence”; no abuse of discretion under Evid. Code, § 352 unless court “ “exceeds the bounds of reason, all of the circumstances being considered” ’ ”].)

There was no abuse of discretion here, and no violation of Aviles’s constitutional rights. (See, e.g., *People v. Abilez* (2007) 41 Cal.4th 472, 503 [discretionary evidentiary ruling did not violate right to present a defense]; see also *People v. Gurule* (2002) 28 Cal.4th 557, 620 [ordinary rules of evidence generally do not infringe on the right to present a defense; rejected arguments that restricted cross-examination violated rights to confrontation, due process, and a fair trial]; see also *People v. Cunningham* (2001) 25 Cal.4th 926, 999 [exclusion of defense evidence on a subsidiary point is not a deprivation of due process].) The court reasonably found the evidence about North Bay’s security cameras was of no or minimal relevance for impeachment, to show a lack of thoroughness of the investigation or as direct evidence of Aviles’s involvement or noninvolvement in the burglary. The court was also reasonably concerned the proposed evidence would confuse the issues, mislead the jury, and be unduly time-consuming. “ ‘[T]he latitude section 352 allows for exclusion of impeachment evidence in individual cases is broad. The statute empowers courts to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues.’ ” (*People v. Ayala* (2000) 23 Cal.4th 225, 301.) The court’s decision in this case to exclude the proffered evidence was within its broad discretion.

DISPOSITION

The judgment is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Petrou, J.

People v. Aviles, A154090